SUPREME COURT, U.S.
JAN 21

IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 73-904

---

**CASWELL DEBERRY** - - - - **Petitioner**

*versus*

**COMMONWEALTH OF KENTUCKY** - **Respondent**

---

**On Petition for a Writ of Certiorari to the Kentucky Court of Appeals**

---

## REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION

---

JOSEPH G. GLASS
425 South Fifth Street
Suite 201
Louisville, Kentucky 40202
*Counsel for Petitioner*

WESTERFIELD-BONTE CO., INC., 619 W. KENTUCKY, LOUISVILLE, KY.

## INDEX


| | PAGE |
|---|---|
| **Citations** | ii |
| **Purpose of the Brief** | 1 |
| **Petitioner's Reply** | 1–5 |
| **Conclusion** | 5 |

Kentucky, in its brief in opposition at page 3, that it is only considering that one truck was involved in this matter. There were, in fact, two (2) trucks involved in this case.

One of the trucks was either an old green or white panel truck, parked well up into the yard of 900 East Madison Street, Louisville. One Officer, Sgt. Davis, testified that this particular truck was white (Transcript of Evidence, page 19, hereinafter referred to as T.E.). Officer Roberts testified that the truck in the yard was green (T.E., p. 25).

However, the truck in which the petitioner was riding at the time of his arrest was a rental van; apparently with markings indicating "Ryders" as the rental agency (T.E., p. 12).

The respondent, at p. 3 of its brief in opposition, leaves the impression that the surveillance on the truck in which the petitioner was arrested lasted more than two and one-half (2½) hours. However, Officer Roberts, in his testimony in Louisville Police Court on November 24, 1971, testified that the moving truck was only at the location (900 Block East Madison) about 20 minutes (T.E., pp. 25-27). He also testified at the suppression hearing, that he did not recall seeing the moving truck come to the alley. However, he admitted that his present recollection was faulty and that he "cleared up" some of the facts of the case by conversations with the people involved (T.E., p. 26). Moreover, Roberts testified that he rode through the alley, with his partner, trying to determine which house. He said "we spotted it." The singular "it"

could only mean the truck in the yard which reaffirms his earlier Police Court testimony (T.E., p. 6).

The fact that there were two trucks involved is crucial to the consideration of this case, petitioner believes, because of the "information" allegedly conveyed to the desk man at the Detective Bureau, Louisville Division of Police. Sgt. Davis, at the pre-trial hearing, testified about the Bureau's Desk Man receiving a call alleging that stolen tires were in a truck located in an alley, behind a home in the 900 Block of East Madison (T.E., pp. 4, 14).

The "information" is about one truck. An entirely different situation is created by the facts of this case, because there are two trucks involved. If, as respondent argues in his brief in opposition at page 5, the police do "have the right to stop or in a technical sense seize an individual for investigatory purposes," how far does this right extend? Or more aptly stated, under the facts of this case, how many trucks may they stop before they have exceeded this "right"?

The respondent has cited *Adams* v. *Williams,* 407 U. S. 143, 32 L. Ed. 2d 612, 92 S. Ct. 1921 (1972), in support of its contention that the police have the right to stop or seize an individual for investigatory purposes. The petitioner submits that *Adams, supra,* is limited to its precise facts. In *Adams, supra,* the officer received information about Williams from a person *known* to him. This Court concluded that the officer had acted justifiably because the informant had provided reliable information in the past and that "The information carried enough indicia of reliability to

justify the officer's forcible stop of Williams," *Adams, supra,* at page 147. These facts are quite different from the matter herein because here, there was no reliable information, nor any good corroboration of the sketchy information provided by the anonymous caller.

*Brinegar* v. *United States,* 338 U. S. 160, 93 L. Ed. 1879, 69 S. Ct. 1302 (1949), also cited in respondent's brief in opposition, should offer respondent no comfort either, because of the facts of that particular case.

In *Brinegar, supra,* the defendant was well known to the government agents because of his reputation for hauling liquor and because the government agent had arrested the defendant on similar charges just a few months before, *Brinegar, supra,* p. 170.

In its *Brinegar* decision, *supra,* at pp. 175-6, this Court reaffirmed its position in *Carroll* v. *United States, infra,* wherein it was held that:

> . . . Probable cause exists where "the facts and circumstances within their (the officers') knowledge and of which they had reasonable trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed. Carroll v. United States, 267 U. S. 132, 162, 45 S. Ct. 280, 288, 69 L. Ed. 543, 39 A. L. R. 790.

Here again, petitioner argues that no such trustworthy or reliable information existed within any of the officers' knowledge, that is, either Sgt. Davis or Officer Roberts. An arrest is not justified by what the subsequent search discloses. *Johnson* v. *United States,* 333 U. S. 10, 68 S. Ct. 367, 92 L. Ed. 436 (1948).

The respondent also cited *Terry* v. *Ohio,* 392 U. S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968); *Sibron* v. *New York,* 392 U. S. 40, 20 L. Ed. 2d 917, 88 S. Ct. 1889 (1968); *Chambers* v. *Maroney,* 399 U. S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975 (1970) and *Whiteley* v. *Warden,* 401 U. S. 560, 28 L. Ed. 2d 306, 91 S. Ct. 1031 (1971). Since petitioner discussed these cases in some detail in his original Petition for Writ of Certiorari he will not be redundant by treating them again.

## CONCLUSION

The petitioner realizes that the fact that there were two trucks involved in this matter was brought forth in his original Petition in both the Statement of the Case section and in the Reasons for Granting the Writ section. However, even though the respondent kindly accepted petitioner's Statement of the Case it still only considered the one truck in the Argument section of its Brief in Opposition. Consequently, the petitioner felt compelled to readdress himself to this point because he feels these facts to be particularly impotrant to the consideration of his Petition for Writ of Certiorari to the Kentucky Court of Appeals.

Respectfully submitted,

JOSEPH G. GLASS
425 South Fifth Street
Suite 201
Louisville, Kentucky 40202

*Counsel for Petitioner*